

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 33 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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HARIJAN CHANA JETHA

Versus

STATE OF GUJARAT

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Appearance:

MR PM VYAS for Petitioner

Ms.B.R. GAJJAR, ADDL. PUBLIC PROSECUTOR for  
Respondent No. 1

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CORAM : MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.R.TRIPATHI

Date of decision: 29/09/1999

ORAL JUDGEMENT : (Per M.R. Calla, J.)

This Appeal is directed against the order of conviction and sentence passed in Sessions Case No.2 of 1987 on 20th December 1988 by the learned Additional Sessions Judge, Gondal, against the present appellant, whereby he was convicted for offences under sections 302 and 452 of Indian Penal Code ("IPC" for brevity) and sentenced to rigorous imprisonment for life and fine of Rs.500/-, in default to undergo imprisonment for six months for the offence under sec.302 IPC and rigorous imprisonment for three years and fine of Rs.250/-, in default of payment of fine to undergo imprisonment for three months. Both the sentences have been ordered to run concurrently.

2. The prosecution came with the case that on 3.6.1986, Madhuben (deceased) along with Bhikha Dahya, had gone from their village Khajurda to Jam Kandorna for Adult Education Camp. Madhuben's father and brothers had gone to do labour work at relief works, but her younger brother Chandu remained at the residence. Madhuben and Bhikha Dahya came back to the village in the afternoon at about 1.30 to 2.00 PM. Madhuben came back with a bundle of slates from the Adult Education Camp at about 3.00 PM. Bhikha Dahya went to Madhuben's house for taking slates and found that Madhuben was lying injured by Kulhada, in the kitchen. She was crying for help. At that time, Jayanti also reached there. Having seen Bhikha Dahya and Jayanti, the accused ran away from Madhuben's house. Bhikha Dahya and Jaynati tried to catch hold of the accused, but could not succeed. Injured Madhuben was profusely bleeding and while coming out she fell on the way. Bhikha Dahya and Jayanti lifted Madhuben and brought her back to the house and sent one Lala Uga for her father, who had gone to attend relief works. Lala Uga went to the site of the relief works and informed the complainant (father of Madhuben) and his wife and sons, who were at the site of the relief works. They immediately came down to the house and found that Madhuben had been seriously injured and was lying in unconscious condition. They arranged for a Matador from the village and took her to Kandorna Hospital for treatment. She was given first aid at Kandorna Hospital and then taken to the Hospital at Dhoraji, where Madhuben succumbed to the injuries. The doctor of the Hospital at Dhoraji informed the Police Station, Dhoraji and thereupon Constable Navrang V. Joshi came to Dhoraji Hospital and noted down the complaint.

3. The reason as was given in the complaint was that the accused was interested in the deceased Madhuben against her wish and about 15 days prior to the date of

the incident, deceased Madhuben had informed her father that the accused, Chana Jetha was asking her to marry him, but she had declined. According to the complainant, the accused was enraged because the deceased had declined to marry him and the accused had caused injuries by a Kulhada on the chest and other parts and killed her. This complaint was sent to the Police Station Jam Kandorna and the Investigating Officer of Jam Kandorna Police Station made an entry bearing no.63 of 1986 in Criminal Register, arrested the accused and started investigation. After investigation, charge sheet was filed against the accused, Chana Jetha under secs.302, 452 of IPC in the Court of Dhoraji. The case then was committed to the Court of Sessions and the accused, Chana Jetha denied charge and opted for trial. As a result of the trial, the accused/ appellant, Chana Jetha has been convicted under sec.302 and 452 of IPC and after hearing him on the question of sentence, the appellant was sentenced to imprisonment for life and fine of Rs.500/-, and in default, to undergo further imprisonment for six months for offence under sec.302 of IPC; and three years rigorous imprisonment and fine of Rs.250/-, and in default to make payment of fine to undergo further imprisonment of three months for the offence under sec.452 of IPC.

4. Aggrieved by this order of conviction and sentence dated 20.12.1988, the present appeal has been preferred.

5. We have heard Shri P.M. Vyas, learned counsel for the appellant and Ms.B.R. Gajjar, learned APP for the respondent and have also gone through the record and papers which are available before us.

6. The prosecution has examined several witnesses and they have supported the case of the prosecution. The learned counsel for the appellant made a pointed reference to the evidence of PW 2, Exh.8, Virji Somabhai, who is the father of the deceased, Madhuben. We find that he has fully supported the case of the prosecution and his testimony has remained untrammelled in the cross examination. Shri Bhikhalal Dahyalal has been examined as PW 3, Exh.9 as an eye witness and he has categorically stated that after return from the Adult Education Camp, he had gone to the house of the deceased Madhuben to collect slates. At that time Chana Jetha was inflicting injuries by Kulhada on the person of Madhuben and after he had reached the spot, the appellant, Chana Jetha ran away. This witness has stated that he was at a distance of 300 to 400 ft. from the house of the deceased. He

has further stated that on hearing cries of Madhuben, Jayantibhai had also come just after him and he as well as Jayantibhai seen the incident with their own eyes and the appellant ran away. He has also stated that Lalji Uga was sent to the place where relief works were going on to call the father of the deceased, when the appellant was inflicting injuries on Madhuben in the kitchen. Madhuben came out of the house to the street (Sheri) and she became unconscious and was profusely bleeding and thereupon he and Jayantibhai brought her back to the house under a covered place and she was made to lie down on a cot. This witness has then stated that at about 3.30, Hirji Soma, Suresh Hirji, Raoji Hamir and Lalji Oga had come and he had told Virji Kaka that Chana Jetha had caused wounds by Kulhada. This witness has further stated that he along with Jayanti had gone for a tempo and carried Madhuben to Kandorna Hospital in Matador. After the first aid as per the advice of the doctor at Kandorna, Madhuben was taken in taxi to Dhoraji and within 10 to 15 minutes of their reaching Dhoraji, Madhuben succumbed to injuries, which she received at the hands of Chana Jetha. The Police then came to the Hospital at Dhoraji and noted down the report of the incident as given by him and Virji Soma. His statements have also been recorded by the Police. He has also identified the weapon of offence, i.e Kulhada, Muddamal article no.5, which was held by the appellant/ accused, Chana Jetha, at the time of causing injuries. This very Kulhada has been shown to him on the next day of the incident by the Police at the Panchayat Office, where he was called in the afternoon. In the cross examination he has given the description of the house of the deceased Madhuben and has also stated that he knew Chana Jetha for many years. That Chana Jetha was married in village Mota Gudala. He has also narrated the suggestions which were made to him. He has also stated that he had run after Chana to catch hold of him for a distance about 10 to 12 ft. Jayanti had also ran after him. He has also stated in the cross examination that Madhu was bleeding from chest, hand, thigh and palm.

7. The next witness, PW 4, Jayanti has also deposed on the same lines in support of the prosecution and his testimony has also remained untrammelled in the cross examination. The deposition of these two witnesses, PW 3 and PW 4 has been sought to be challenged by the learned counsel for the appellant, Shri Vyas by saying that there are contradictions on the question of arrangement of the vehicle, i.e. tempo/ matador and that witness, PW 4, Jayanti has stated that after Madhuben was taken to Dhoraji, he had returned back to his village. We find

that these contradictions are the contradictions of no consequence. Both these eye witnesses have fully supported the prosecution case against the appellant and there is no reason to disbelieve either of them. The father of the deceased has also deposed about the motive and has clearly stated that his daughter had told him about 15 days prior to the incident that the appellant wanted to marry her forcibly, but she had declined in clear terms. Thus, the motive is also established that the appellant had assaulted Madhuben and done her to death because she declined to marry him.

8. PW 6, Lala Ugabhai was examined vide exh.13, who had gone to the place of relief works to call the father of the deceased, has also supported the prosecution case.

9. PW 5, Dr. Pravinchandra, who was posted as Medical Officer at Dhoraji at the relevant time has stated that Madhuben Virji was brought to him, but on examination, he found that she was dead. He had informed the Police Station, Dhoraji and thereupon the Police came there, prepared Panchnama of the corpse and carried out other procedure. The corpse was handed over with Inquest Report and he conducted autopsy on the very day.

He has deposed about the injuries on the left side of the chest and has pointed out that there was 15 cm. long incised wound on the left breast upto the fractured ribs and the ribs and tissues could also be seen. There was a 4 cm. long incised wound at about 2 cm above left breast, which was as deep as 1.5 cm. and this wound was dressed. He has also stated about the third injury on the left side of the chest at 6 cm. above the left breast, which too was an incised wound about 3 cm. in length and about 1 cm deep, which was also dressed. The fourth injury was on the ring finger of the left hand and there was a 3 cm. long and 1.5 cm. deep incised wound on the little finger, which too was dressed. The fifth injury was 12 cm. long, 5 cm. deep on the left elbow joint. The bone and tissues were also visible and this injury had also been dressed. The sixth injury was found to be on the outer side of the left hand about 5 cm. from the wrist, which was an incised lacerated muscle deep wound and that too was dressed. On the front side of the left thigh there was an incised wound of about 3 cm. in length at a distance of 8 cm from left knee joint, which was 1.5 cm deep. The eighth injury was on the outer side of the right hand about 5 cm above the wrist, which was 1 cm. in length and 0.5 cm. deep. He has also stated that injury no.1 was also dressed.

He has then described the internal injuries as per the Postmortem Report. He was subjected to several questions in the cross examination which have been recorded in 'question and answer' form, but the statement of this witnesses corroborates the case of the prosecution and the prosecution has not been able to dislodge this witness in any manner. He has also stated that all the injuries were ante mortem and the external injury no.1 goes with the internal injuries nos.1, 3 and 4; internal injury no.1 goes with the external injury no.5; and injuries inflicted upon the deceased were sufficient in ordinary course to cause death and he has described shock from internal hemorrhage due to injury to left lung and pleura as cause of death.

10. PW 14, Dr.Hardas Becharbhai Savalia, who has been examined at exh.24, and who was posted as Medical Officer at the relevant time in the Government Hospital at Jam Kandorna and who had taken care of the deceased immediately after the incident has also narrated the eight injuries as were sustained by the deceased and has also proved the certificate, exh.25.

11. The Circle Inspector, Parshottambhai, PW 1, examined at exh.6, who had drawn the map of the scene of occurrence and Shri Ranmalbhai Nathabhai, PW 21, examined vide exh.49, who was the Investigating Officer, had furnished details of steps taken during the course of investigation and preparation of Panchnama, etc. He has also deposed about recovery of Kulhada and Panchnamas, exhibits 33 and 34.

12. In the facts of this case and keeping in view the evidence, we find that there is ample evidence corroborated by the medical evidence, recovery of the offence weapons coupled with proof of motive. Except some minor contradictions of no consequence, nothing has been pointed out before us on the basis of which it can be said that the order of conviction and sentence as has been recorded by the trial court warrants any interference by this Court. The learned Additional Sessions Judge has discussed evidence in detail and thereupon came to the conclusion and thereafter recorded conviction and order of sentence.

13. Learned counsel for the appellant has not been able to point out that the order lacks the objective and proper appraisal of evidence or that there was any misreading of the evidence on the part of the learned Additional Sessions Judge. The commission of offence by

the appellant has been proved by the prosecution beyond any doubt and the sentence has been ordered after hearing the counsel for the appellant/ accused.

14. We do not find any merit in this Appeal. The same is hereby dismissed.

(M.R. Calla, J.)

(Ravi R. Tripathi, J.)

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